

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Case No. 1:04-CV-417

TPI DESERT CARMEL, LLC,

HON. ROBERT HOLMES BELL

Debtor.

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**ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On May 17, 2005, Magistrate Judge Ellen S. Carmody issued a report and recommendation (Docket # 100) recommending that Intervenor Steve Thomas' Motion to Set Aside Proposed Order Approving Settlement with Burt Hoehne and His Affiliated Entities (Docket # 91) be denied. Mr. Thomas has filed objections to the report and recommendation.

This Court is required to make a *de novo* review upon the record of those portions of the Report and Recommendation to which specific objections have been made. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

Mr. Thomas' primary objection to the report and recommendation is based on his contention that his interest in profits from the Desert Carmel property may not be recoverable if the settlement proceeds are distributed to Mr. Hoehne before Mr. Thomas has an opportunity to establish his partnership interest in those proceeds.

The Magistrate Judge's recommendation that Mr. Thomas' motion to set aside the proposed order approving settlement be denied was based upon her determination that

Mr. Thomas does not have a claim against the Debtor or any interest in the property, and his alleged contractual agreement with Mr. Hoehne does not affect the Debtor or the bankruptcy estate. Mr. Thomas' objections to the report and recommendation do not affect this essential finding. Accordingly, upon due consideration of Mr. Thomas' objections,

IT IS HEREBY ORDERED that the Magistrate Judge's May 17, 2005 report and recommendation is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Intervenor Thomas' motion to set aside proposed order approving settlement (Docket # 91) is **DENIED**.

Date: June 6, 2005

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE